

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

ANDREW GROSS, III,

Petitioner,

v.

CASE NO. 02-80163  
HONORABLE BERNARD A. FRIEDMAN

UNITED STATES OF AMERICA,

Respondent.

**ORDER TRANSFERRING DEFENDANT'S MOTION FOR DOWNWARD  
DEPARTURE TO THE SIXTH CIRCUIT AND ENJOINING PETITIONER FROM  
FILING ANY FURTHER MOTIONS IN THIS COURT WITHOUT FIRST OBTAINING  
LEAVE OF COURT**

This matter is before the Court on Petitioner's "Emergency Motion for a Downward Departure." [docket entry 147]. Petitioner "argues his guilty plea should be vacated and/or he should be granted a downward departure and the BOP should be enjoined from transferring him to a USP/FCI facility." Motion, p.2. By the court's calculation, this is Petitioner's fifth attempt at challenging his sentence. *See* docket entries 125, 126, 136 and 143.

The Court will transfer the present motion to the Sixth Circuit as a second or successive motion under 28 U.S.C. § 2255, as it did with Defendant's previous motions challenging his sentence, because Defendant has not obtained the required certification from the Sixth Circuit. *See* 28 U.S.C. § 2255(h).

The Court has warned Petitioner twice that his multiple successive § 2255 motions without the required Sixth Circuit certification may leave the Court with no choice but to enjoin Petitioner from filing any further motions in this Court without first obtaining leave of Court. *See* docket entries 144 and 150. Petitioner has disregarded these warnings with the filing of the present motion.

Accordingly,

IT IS ORDERED that Petitioner's motion requesting downward departure [docket entry 157] is transferred to the United States Court of Appeals for the Sixth Circuit pursuant to 28 U.S.C. § 1631. *See In Re Sims*, 111 F.3d 45, 47 (6<sup>th</sup> Cir. 1997).

IT IS FURTHER ORDERED that Petitioner is enjoined from filing any further motions in this Court without first obtaining leave of Court.

S/Bernard A. Friedman  
BERNARD A. FRIEDMAN  
UNITED STATES DISTRICT JUDGE

DATED: \_August 26, 2009\_\_\_\_\_